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No. 86-329

In the Supreme Court of the United States

October Term, 1986

CORY GARDINER, et al.,

Petitioners,

vs.

SEA-LAND SERVICE, INC., et al.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Respondent Chevron Shipping Company's Brief in Opposition to Petition for a Writ of Certiorari

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QUESTION PRESENTED FOR REVIEW

Does the ruling below--which correctly determined that the collectively bargained rate of maintenance must be enforced where a genuine quid pro quo was arrived at through collective bargaining and is consistent with applicable case law and policy--require review by this Court?[1]

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1 Chevron Shipping Company was a defendant in the proceedings below. Chevron Shipping Company is a wholly owned subsidiary of Chevron Corporation, a publicly owned corporation. Chevron Corporation owns stock in the following publicly owned corporations:

Huntington Beach Co.
AMAX, Inc.
Cetus Corp.
UNC, Inc.

The other parties to the proceeding are listed on page ii of the Petition for Writ of Certiorari.

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PRELIMINARY STATEMENT

Petitioners have not set forth a single ground for granting of certiorari which merits serious consideration by this Court. Contrary to petitioners' assertions, the decision of the Court of

Appeals conflicts neither with the decisions of this Court, nor with the decision of the Fifth Circuit in McWilliams v. Texaco, Inc. (5 Cir. 1986) 781 F.2d 514. Further, the decision below is consistent with national labor policy. This case presents no important question of law and there is no need for review by the Court.

STATEMENT OF THE CASE

Petitioners, seven seamen belonging to various maritime unions, brought suit asserting a right to maintenance payments from their employers greater than the daily rate of $8 set by the collective bargaining agreements between petitioners' unions and their employers. The $8 rate was in fact a bargained issue; increases in the maintenance rate were requested and subsequently withdrawn during the collective

bargaining process. Maintenance was bargained for as a part of the overall benefits package, which included very substantial work and welfare benefits which far exceed those to which seamen would be entitled under maritime law.

The parties stipulated that respondents would move for dismissal and/or summary judgment on the ground that petitioners were not entitled to the relief sought and that defendants were entitled to judgment on the merits because the collectively bargained maintenance rates were enforceable as a matter of law. The district court denied respondents' motion and certified the case for interlocutory appeal under 28 U.S.C. § 1292(b).

The Court of Appeals granted the petition for permission to appeal and reversed. It held that because the comprehensive benefits package ne-

gotiated on petitioners' behalf was "quid pro quo" for the contractually specified rate of maintenance, federal labor policy required that the maintenance rate be enforced:

> "The adequacy of the maintenance rate should not be examined in isolation by the court because the determination of its adequacy in relation to the whole scheme of benefits has already been made by the union and the seamen who voted for the contract.
> * * *
>
> "We hold that when a benefits package includes an express reference to a precise rate of maintenance, the adequacy of this rate, considered in isolation, is not a subject for judicial speculation when the rate is part of a total package of wages and benefits resulting from the process of collective bargaining" (Pet., Appx. A, pp. A-10-A-11).

REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

I. THE DECISION BELOW IS NOT IN CONFLICT WITH THE DECISIONS OF THIS COURT OR OF THE FIFTH CIRCUIT.

Contrary to petitioners' contention (Pet., pp. 6-7), the decision below does not conflict with this Court's decisions. Petitioners rely on dicta in Cortes v. Baltimore Insular Line (1932) 287 U.S. 367, and De Zon v. Amer. President Lines (1943) 318 U.S. 660, which are in any event irrelevant. There is no agreement in this case which abrogates the duty of maintenance. Mindful of the fact that it should not enforce "a mere token amount [which] is designated for maintenance without a genuine quid quo arrived at through collective bargaining" (Pet., Appx. A, p. A-11), the court below specifically found that:

> "* * * the contract here does not abrogate a maritime right. Rather, it expressly recognizes the maritime right to maintenance and seeks to preserve it as part of the overall negotiating process" (Pet., Appx. A, p. A-11).

Further, neither Cortes nor De Zon involved collective bargaining agreements or the federal labor policy relevant thereto.[1]

Nor is the Fifth Circuit's decision in McWilliams v. Texaco, Inc. (5 Cir. 1986) 781 F.2d 514 (Pet., p. 7) inconsistent with the decision below. The issue of whether the $8 daily rate must be enforced because it was part of the collective bargaining agreement was not raised or decided in McWilliams,

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1 For the same reasons, Aguilar v. Standard Oil Co. (1943) 318 U.S. 724, which petitioners cite for the proposition that maintenance shall be liberally awarded (Pet., p. 7), is irrelevant.

and, therefore, it is not precedent on that point.

II. THE COURT OF APPEALS CORRECTLY DETERMINED THAT THE POLICIES UNDERLYING THE LABOR LAW AND COLLECTIVE BARGAINING REQUIRE THAT THE MAINTENANCE RATE SET FORTH IN THE COLLECTIVE BARGAINING AGREEMENT BE ENFORCED.

Petitioners' abbreviated argument concerning their contention that the court below was incorrect in determining that labor policy requires enforcement of the collectively bargained maintenance rate (Pet., p. 9) is based on a misconception of collective bargaining. Petitioners argue, without substantiation, as if union seamen are alone and unrepresented, have no say in what their unions do, and as if the interests of the union are contrary to

those of its members. However, as the court below recognized:

> "Our national labor policy is built on the premise that employees can bargain most effectively for improvements in wages, hours, and working conditions by pooling their economic strength and acting through freely chosen labor organizations. NLRB v. Allis-Chalmers Co., 388 U.S. 175, 180 (1967)" (Pet., Appx. A, p. A-8),

and that

> "* * * the determination of its [the maintenance rate] adequacy in relation to the whole scheme of benefits has already been made by the union and the seamen who voted for the contract" (Pet., Appx. A, p. A-10; emphasis added).

This is precisely what petitioners ignore in arguing that to deny enforcement to the collectively bargained rate would not impair national labor policy. Petitioners ignore the fact that they, along with other seamen, pooled their economic strength in freely chosen labor organizations which

represent them, that their representatives bargained and agreed to the rate in question, that they had an opportunity to vote on the contracts, setting forth that rate, and that the contracts necessarily received the votes required for approval.

Under these circumstances, to say that the collectively bargained rate is unenforceable would be telling union members, who approved the contracts, and unions and employers, who negotiated the contracts, that they are incompetent to determine for themselves which mix of benefits and burdens best fits their particular needs. This, of course, would be antithetical to our national labor policy. The result petitioners seek "would violate the fundamental premise on which the Act [National Labor Relations Act] is based--private bargaining under governmental supervision

of the procedure alone, without any official compulsion over the actual terms of the contract" (Porter Co. v. NLRB (1970) 397 U.S. 99, 108; emphasis added).

Failure to have enforced the collectively bargained rate would have discouraged collective bargaining. It would raise the specter that individual union members who either did not agree with the majority or voted for the contract and later changed position could overturn a fairly bargained and approved contract. It would also discourage collective bargaining on areas of the employment relationship not yet the subject of an agreement for fear that one aspect of the contract will not be enforced, although the quid pro quo given for the provision will remain enforceable. Such would have been the case here where there was no allegation that

the collective bargaining agreement as a whole was unfair or inadequate (Pet., Appx. A, p. A-9) and petitioners sought no change to the remainder of the contract.

The court below was clearly correct in holding that:

> "We cannot fairly say that this rate, as a consequence of the normal 'give and take' process of collective bargaining, is not entitled to the same reliability accorded to other terms and conditions within the same agreement. The national labor policy of promoting and encouraging collective bargaining agreements would be unduly compromised were we to conclude otherwise" (Pet., Appx. A, p. A-9).[2]

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2 The courts in Grove v. Dixie Carriers, Inc. (E.D.La. 1982) 553 F.Supp. 777 and Hodges v. Keystone Shipping Co. (S.D.Tex. 1983) 578 F.Supp. 620 reached the same conclusion as the Court of Appeals here--that the $8.00 collectively bargained rate must be enforced. The only case to the contrary, Rutherford v. Sea-Land Service, Inc. (N.D.Cal. 1983) 575 F.Supp. 1365, was

(Footnote Continued)

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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(Footnote Continued)

decided by a district court in the Ninth Circuit which also decided the instant case. The Ninth Circuit necessarily rejected Rutherford in reversing the district court in the case at bar.